THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 19306 of 2005

Date: 21.10.2005

Between:

1)Dubba Maheswar Reddy, s/o. D.Busi Reddy,
r/o. Monopad village & mandal,
Mahaboobnagar district & another

…Petitioners

and

1)The Government of Andhra Pradesh,
Agricultural & Co-operation (Co-op. V) Dept.,
Secretariat, Hyderabad, rep. by its
Principal Secretary & 4 others

…Respondents

ORDER:

1. Challenging the order of the third respondent dated 25.07.2005 under Section 15-A of the A.P. Co-operative Societies Act (for short,

'the Act'), the present Writ Petition is filed.

2. The brief facts that are necessary for disposal of this Writ Petition are as follows:

The petitioners are members of Monapad Primary Agricultural Co-op. Society (PACS) Ltd.; that the third respondent issued notification on 20.06.2005 under Section 15-A (1)(e) of the Act proposing to amalgamate 9 PACS with Manopad PACS, which was identified as focal point non-viable society, and invited objections or suggestions; that the third respondent issued impugned order dated 25.07.2005 ordering merger of seven non-viable societies identifying PACS-Amarvai and PACS-Kalgotla as focal point non-viable societies; that the said order is without authority or jurisdiction or application of mind; that the powers of the Collector are codified in G.O. Ms. No. 34 Food & Agrl. (Co-op. IV) Dept., dated 18.01.1989, which was issued in super session of earlier G.Os. and the Collector has no power under Section 15-A of the Act ; that the fact that eight non-viable societies proposed for merger with the erstwhile society which was rated as focal point non-viable society, was ignored in the impugned orders; that the third respondent acted at the behest of Z.P.T.C. member, Manopad and Sarpanch of Amarvai and changed his opinion; that all these 9 societies are at a very short distance and it is convenient to the members of the said societies to avail the services of the erstwhile society; hence, the Writ Petition.

3 . The fourth respondent filed counter affidavit on behalf of the respondents 1 to 4 denying the averments in the petition and stating that as per G.O. Ms. No.176 Agrl. & Co.op. (COOP.V) Dept., dated 14.06.2005, the Collector shall identify viable and non-viable societies mandalwise and take action as per the provisions of Section 15-A of the Act, and that he shall issue notification for the proposed amalgamation of non-viable societies identified; that as per G.O. Ms. No.82 Food & Agrl. (Co-op. IV) Dept., dated 16.02.1987, the District Collector is conferred with powers of Section 15-A of the Act;

that since G.O. Ms. No.176, dated 14.06.2005 is latest than G.O. Ms. No. 34 Food & Agrl. (Co-op. IV) Dept., dated 18.01.1989 referred by the petitioners, the action of the third respondent is well within the powers conferred on him; since none of the societies in Manopad mandal fulfilled conditions prescribed by expert committee or task force committee, notification dated 20.06.2005 was issued proposing to merge the eight societies into one society viz. Manopad; on the representation of Z.P.T.C. member, Manopad who is also member of PACS Amarvai, and the Sarpanch of Amarvai, the matter was taken up for consideration, and taking into performance of the societies in the mandal and as per the guidelines in G.O. Ms. No.176, dated 14.06.2005, PACS-Amarvai and PACS-Kalgotla were identified as focal point societies and the remaining 7 societies were ordered for merger with the focal point non-viable societies; since the performance of the petitioner-society was not satisfactory, it was ignored in the final orders dated 25.07.2005; that the restructuring was taken up keeping in view the distance of all nine non-viable societies in the mandal; that the PACS identified as focal point non-viable societies fulfilled many of parameters fixed by the expert committee and task force committee, but the petitioner-society did not fulfil even a single parameter; hence, the Writ Petition is liable to be dismissed.

4. The fifth respondent filed counter affidavit runs on the same lines as that of the counter affidavit of other respondents and prayed for dismissal of the Writ Petition.

5 . The learned counsel for the petitioners contended that the Collector already formed an opinion to merge all the non-viable societies notified in Manopad mandal and proposed for amalgamation/ merger in PACS-Manopad by issuing notification dated 20.06.2005; that he can not turn around and take a different view on the basis of the representations of the ZPTC member of

Manopad and Sarpanch of Amarvai, who have no say in the matter of merger; that all the concerned societies passed general body resolutions accepting the proposal of merger; now the impugned notification was issued without any notice to the Manopad society, which is violation of principles of natural justice; that the impugned order does not contain any reasons at all for changing the opinion by the Collector. The learned counsel further contended that the Collector has no power under Section 15-A of the Act and the powers of the Collector are codified in G.O. Ms. No. 34 Food & Agrl. (Co-op. IV) Dept., dated 18.01.1989, which was issued in super session of earlier G.Os.; that the order of the Collector is vague, cryptic and bald; hence, he prays to allow the Writ Petition.

6. The learned Government Pleader for Co-operation appearing for the respondents 1 to 4 contended that under Section 3(1) of the Act, any number of persons can be appointed to exercise power under Section 15-A of the Act; that as per the G.O. Ms. No.82 Food & Agrl. (Co-op. IV) Dept., dated 16.02.1987, the Collector was given powers of Registrar; that the subsequent G.O. Ms. No. 34 Food & Agrl. (Co-op. IV) Dept., dated 18.01.1989 has no reference to the earlier G.O.; the purpose for which both the G.Os. were issued is different; that unless the earlier G.O. is expressly superceded or repelled by the latter G.O., it is deemed that the earlier G.O. is in existence; that Sarpanch and Z.P.T.C. member are the members of the society; therefore, they are entitled to raise any objection; that the policy of the Government for merger of the non-viable societies is not under challenge; that the impugned order contains some reasons; that since Amarvai is more viable than Manopad, the impugned order was passed; there are no grounds to interfere with the same; hence, he prayed to dismiss the Writ Petition.

7. On the other hand, the learned counsel for the fifth respondent contended that in pursuance of the impugned proceedings, charge

has already been handed over and records were also given; the election process has been commenced and preparation of voters' list has been started; therefore, at this point of time, the impugned proceedings can not be interdicted; hence, she prays to dismiss the Writ Petition.

8 . Initially, the Collector(Co-operation) (third respondent), Mahaboobnagar vide proceedings dated 20.06.2005 issued notification under Section 15-A(1)(e) of the Act made a proposal to amalgamate non-viable societies at Manopad mandal with the erstwhile PACS-Manopad which was identified as focal point non-viable society, calling for objections or suggestions from the societies or members or depositors, creditors, employees or other persons concerned with the affairs of each such society within 21 days from the date of publication of that notification. Almost all the PACS passed resolutions by their respective general body without any objection for the notification issued by the Collector. The reason given by the Collector in the impugned order is that the Z.P.T.C. member, Manopad and the Sarpanch, Amarvai have represented to retain two societies viz. PACS-Amarvai & PACS-Kalgotla, by merging the surrounding societies in the mandal; that the objections were examined in Manopad mandal; there are three non-viable societies; these societies have covered 34 villages of the mandal and having loan outstanding of Rs. 615.11 lakhs; the societies are affiliated to different branches of District Co-op. Central Bank; that merging of eight societies in one PACS will be inconvenient to the members of the society and in view of geographical condition of the mandal, the representation is considered and accepted to form two PACS in the mandal. Therefore, the impugned order contains some reasons for the action taken.

9. Section 15-A reads as follows:

"Identification of viability of societies and consequences thereof:

1.Notwithstanding anything in this Act or the rules made thereunder or the bye-laws of the society concerned, if the Registrar is of the opinion that in respect of a society or societies in receipt of State aid as specified under Section 43 of the Act it is necessary to amalgamate or merge any society with any other such society or to divide and restrict or transfer the area of operation of a society or to liquidate a society for any of the following purposes, namely:-

a. for ensuring economic viability of any or all the societies concerned; or

b. for avoiding overlapping or conflict of jurisdictions of societies in any area; or

c. for securing proper management of any society; or

d. in the interest of the co-operative movement in general and of co-operative credit structure in particular in the State taken as a whole; or

e. for any other reason in the public interest, he may identify the viable and non-viable societies which may be retained or divided with consequential restriction of the area of operation or the transfer of such area or amalgamated or liquidated, as the case may be, and may by a notification to be published in the prescribed manner, specify the area of operation of each such society or societies to be retained, divided or amalgamated with any other society indicated in the said notification and invite objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with the affairs of each such society to be received within twenty-one days from the date of publication of the notification."

It is clear from above that under Section 15-A of the Act, the Registrar may identify viable and non-viable societies which may retain or divide with consequential restrictions by issuing notification to be published in the prescribed manner and invite objections from the societies, members, depositors, creditors or employees. This Court in *Sri Uma Sankara Handloom Weavers Co-*

operative Production & Sales Society Ltd., & Ors. V. Govt. of Andhra Pradesh rep. by its Ex.Officio Secretary, Commissioner Handloom & Ors held that as follows: (para 19)

> "…The very spirit of Section 15-A is to identify viable and non-viable societies, thereafter form an opinion as to whether they should be retained, divided or liquidated. Thus, the principal thrust of the provision is primarily to identify the societies. Therefore, when the first requirement of section namely the identification of the society has not been complied with by the Registrar, the formation of opinion is liable to be set-aside."

10. In the case on hand, it is not in dispute even according to the petitioners that the Collector has already formed opinion for identifying viable and non-viable societies in Manopad mandal. It is the case of the respondents that the Collector is competent to issue notification under Section 15-A(1)(e) of the Act in pursuance of G.O. Ms. No.82 Food & Agrl. (Co-op. IV) Dept., dated 16.02.1987. But, the learned counsel for the petitioners placed strong reliance on G.O. Ms. No. 34 Food & Agrl. (Co-op. IV) Dept., dated 18.01.1989 and stated that Section 15-A of the Act is excluded in the G.O., which shows that the Collector has no power and hence, the earlier G.O. was impliedly over-ruled. G.O. No.34 dated 18.01.1989 discloses Sections under which the powers are delegated, whereas the G.O. No.82, dated 16.02.1987 specifically notified that the Collector is the Registrar for the purpose of notification under Section 15-A of the Act.

11. The learned Government Pleader appearing for the respondents relied on a decision reported in *State of M.P. v. Kedia Leather & Liquor Ltd. & others* wherein it is held as follows: (para 15)

> "The doctrine of implied repeal is based on the theory that the legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does no more than give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The court leans against implying a repeal,

> unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together. (See Craies on Statute Law, 7th Edn., p.366, with reference to Berrey Re 11).

To determine whether a later statute repeals by implication an earlier statute, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects, and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side."

Basing on the above decision, it is contended by the learned Government Pleader that since the earlier G.O. is not over-ruled either expressly or impliedly, the same is not repealed. Hence, his contention is that the Collector is competent to issue such notification.

12. The said two G.Os. are separate and distinct and so long as G.O. No.82 dated 16.02.1987 is not superceded in the subsequent G.O. either expressly or by necessary implication, it is deemed that the said G.O. is in existence. This Court is unable to accept the contention of the learned counsel for the petitioners that since the Collector is not designated in the subsequent G.O. as Registrar for the purpose of notification under Section 15-A of the Act, the Collector is not competent to issue the notification, in view of the fact that in G.O. No.82, the District Collector is specifically conferred with powers under Section 15-A of the Act.

13. The Government of Andhra Pradesh issued G.O. Ms. No.176 Agriculture & Co-operation (COOP.V) Department, dated 14.06.2005 issuing certain guidelines for the purpose of reconstruction of PACS. It is not the case of the petitioners that the Collector has not followed

the guidelines issued by the Government. So also, the policy decision taken by the Government for merger of non-viable societies and identification of non-viable societies, is not under challenge. It is one of the contentions raised by the learned counsel for the petitioners that once the general body unanimously agreed for the merger with Manopad PACS, the Collector can not act on the representations of the Z.P.T.C. member and Sarpanch. It is not in dispute that Z.P.T.C. member and Sarpanch are the members of the PACS. It is not only the general body, but also every member has got a right to give objections, under Section 15-A of the Act. A specific plea has been taken by the fifth respondent that the general body meeting convened by the society on 28.06.2005 was attended by only 25 members whereas 115 members represented to the District Collector through the Sarpanch of Amarvai village seeking retention of the society without merging in Manopad PACS. It is not required in this Writ Petition to decide whether there is a Coram in the general body or not, whether the resolution is binding on the members or not. But, the fact remains that any member can give representation to the Collector in spite of the fact that the general body took a decision. Thereafter, it is for the collector to decide on the facts and circumstances prevailing. Simply because the general body passed a resolution to merge the society into Manopad PACS, it does not mean that the members are completely debarred from making any representation to the Collector. All the members have not attended the general body meeting and majority of the members made a representation to the Collector through Sarpanch of Amarvai. As per the Act, when any member can give representation, the Collector can take the representation of the Z.P.T.C. member and Sarpanch, who are admittedly members of the society, into consideration and take a decision. Therefore, the contention of the learned counsel for the petitioners that the members are bound by the general body resolution can not be accepted. But, in so far as the affairs of the society are concerned, it may be a fact that the members are bound by the general body resolutions.

14. The fourth respondent filed counter affidavit stating the among nine non-viable societies, the performance of PACS-Amarvai and Kalgotla were found satisfactory and so, they were retained as focal non-viable societies and remaining societies were recommended for merger. A report on the performance of PACS-Amarvai & Manopad, basing on the audit reports for the year 2003-04 is furnished by the respondent. As per this comparative report, gross profit earned during the year 2003-04 by PACS-Amarvai was 3.79 lakhs, whereas PACS-Manopad was in loss by 2.64 lakhs. Though it is denied by the petitioners by filing a reply affidavit stating that the figures and statements given by the respondents are absolutely incorrect, but there is a presumption under Section 114(e) of the Indian Evidence Act that all the judicial and official acts have been regularly performed. The petitioners simply denied the statistics furnished by the fourth respondent. The presumption under Section 114(e) of the Indian Evidence Act can be rebutted by producing necessary material. But, the petitioners simply denied the figures and statements in the reply affidavit. Therefore, the comparative assessment and performance of both the societies have been taken into consideration basing on the audit report. Since the performance of the fifth respondent-society was far better than that of the petitioners' society, the same was retained as focal point non-viable society.

15. It is further contended by the learned counsel for the petitioners that once the Collector formed an opinion by issuing notification dated 20.06.2005 wherein PACS-Manopadu was notified as focal point non-viable society, the third respondent has no jurisdiction to change his opinion without application of mind. The learned Government Pleader for Co-operation appearing for the respondents relied on a decision in *Barium Chemicals Ltd. & another v. Company Law Board* wherein it is held that non-formation of opinion can be challenged on the ground of non-application of mind. It is, however, open to the authorities concerned to show that there was formation of

opinion from the records. Such formation of opinion need not necessarily be reflected in the impugned order. In this Case also, the impugned order contains some reasons. Since merging of the 8 societies in one PACS will be inconvenient to the members of the societies and in view of geographical condition of the mandal, the Collector accepted for having two PACS in the mandal as focal point non-viable societies. The contention of the learned counsel for the petitioners is that the distances from the villages of the members and other geographical aspects have not been reflected in the impugned order and therefore, the said reason can not be a ground for constitution of two PACS in the mandal. Though the impugned order does not contain any distance and other geographical conditions, but at the same time, the petitioners can also demonstrate how that reason is perverse or arbitrary. Therefore, the impugned order can not be shown to be passed without recording any reasons. It is not a question of acting at the behest of the Sarpanch and Z.P.T.C. member, the impugned proceedings have been issued.

16. It is also contended that once the Collector has formed an opinion by issuing notification dated 20.06.2005 and he wants to rescile from the said notification in identifying focal points, he ought to have issued notices to the PACS-Manopad, and so, there is violation of principles of natural justice. There can not be any dispute that the principles of natural justice have to be followed when an order affects the right of a party. By the impugned action of the Collector, two focal points were identified with headquarters at Amarvai and Kalgotla. The reason for identifying the two focal points is that merger of 8 societies into one PACS would be inconvenient to the members of the societies. The same can not be said to be arbitrary and unfair. Considering better performance of the PACS-Amarvai, it was notified as a focal point non-viable society. By merging PACS-Manopad into PACS-Amarvai, no right of the petitioners has been infringed in any manner. In such view of the matter, the question of again calling for

objections or giving any opportunity to the PACS-Manopad does not arise.

17. The learned counsel for the petitioners placed strong reliance on the unreported decision of this Court in Writ Petition No. 19123 of 2005, dated 01.09.2005 wherein the order passed by the Collector ordering merger of PACS Burdipad with PACS-Kalgotla was set aside on the ground that it does not contain any reasons. But, in the said case, the proposal for amalgamation/ merger of PACS-Burdipad with PACS-Kalgotla has been ordered in the final order without any reasons at all. Therefore, this Court set aside the merger with a direction to the Collector to pass appropriate orders. But, the impugned order in the case on hand contains sufficient reasons for identifying the two focal points. Therefore, the decision has no application to the facts of the present case.

18. Lastly, it is contended by the learned counsel for the fifth respondent that the election process has been started and therefore, now the merger can not be interdicted. It is not in dispute that the Collector by proceedings dated 25.07.2005 appointed Election Officer to conduct elections to the fifth respondent-society. No doubt, no date is fixed by the Election Officer for elections. The contention of the learned counsel for the petitioners is that unless the date, time and place of elections are fixed, it can not be said that the election process is commenced. According to the learned counsel for the petitioners, stage of reckoning of starting of election process is the date of poll, but not the appointment of the Election Officer.

19. As per Rule 22(2)(b) of the A.P. Co-operative Societies Rules, 1964, the Election Authority of the district shall appoint an Election Officer for each society and as per Rule 22 (2) (b) (vi) of the Rules, the Election Officer has to fix date of the poll. The election process commences when the Election Officer is appointed. So, I am of the opinion that the election process commences as soon as the Election

Officer is appointed by the competent authority. Therefore, for the aforesaid reasons, the Writ Petition is devoid of merits.

20. The Writ Petition is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

21.10.2005

DRK